

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 02-00225 DAE
	)	
Plaintiff,	)	DECLARATION OF COUNSEL
	)	
vs.	)	
	)	
ANDY S. S. YIP, (01)	)	
BRENDA M. O. CHUNG, (02)	)	
	)	
Defendants.	)	
_____	)	

DECLARATION OF COUNSEL

HOWARD K. K. LUKE, states as follows:

- 1) Declarant is licensed to practice law before this Honorable Court and is the attorney representing Defendant, Brenda M. O. Chung (02), in the above-entitled matter;
- 2) Declarant has reviewed the records and files pertaining to the above-entitled matter and is informed and believes:
  - a) On December 3, 2003, the government filed its Second Superseding Indictment (hereinafter "Indictment") in the above-referenced case;
  - b) The Indictment charges Defendants Andy S. S. Yip (hereinafter "Yip") and Brenda M. O. Chung (hereinafter "Chung"), with conspiracy in count 1;

c) The conspiracy alleges, *inter alia*, the solicitation of an “E. D.” to assist Defendant Yip in providing false promissory notes to the Internal Revenue Service;

d) Counts 2 and 3 of the Indictment charge Defendant Chung with violations of 18 U.S.C. §1512(b)(1) [tampering with a witness];

e) Counts 4 through 9 of the Indictment charge Defendant Yip with violations of 26 U.S.C. §7206(1);

f) Counts 10 and 11 of the Indictment charge Defendant Yip with, *inter alia*, violations of 31 U.S.C. §§ 5314 and 5322(b);

g) Defendant Chung is neither charged nor mentioned as a Defendant in counts 4 through 11 of the Indictment;

h) On January 29, 2007, a final pretrial conference in the above-entitled matter was held pursuant to CrimLR 17.1.1, before the Honorable Barry M. Kurren, United States Magistrate Judge;

i) Appearing at the final pretrial conference were Assistant United States Attorney Leslie E. Osborne, Jr., and defense counsel Howard T. Chang for Defendant Yip, and the undersigned counsel for Defendant Chung (a copy of the Report of Final Pretrial Conference, Minutes and Order is appended hereto as Exhibit A);

j) As stated by Mr. Osborne at the final pretrial conference, and memorialized in paragraph 1 on page 3 of the Minutes and Order of that conference, the government does not intend to introduce at trial any evidence pursuant to Federal Rules of Evidence Rule 404(b);

k) Based upon the representation by the government that no evidence shall be introduced at trial pursuant to Federal Rules of Evidence Rule 404(b), evidence as to counts 4 through 11, which do not pertain to Defendant Chung, would constitute impermissible Rule 404(b) evidence as to Defendant Chung, and therefore would be irrelevant, unduly prejudicial, and only serve to confuse the issues before the jury, and to otherwise mislead the jury all to the prejudice of Defendant Chung.

I, Howard K. K. Luke, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, February 7, 2007.

/s/ Howard K. K. Luke  
HOWARD K. K. LUKE  
Declarant